



## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

#### **29 CFR Part 2550**

#### **RIN 1210-AB38**

#### **Target Date Disclosure**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Department of Labor's Employee Benefits Security Administration is reopening the period for public comment on proposed regulatory amendments relating to enhanced disclosure concerning target date or similar investments, originally proposed in a previously published document in the Federal Register.

**DATES:** Written comments on the proposed regulation should be received by the Department of Labor no later than **[ENTER DATE THAT IS 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously. Persons submitting comments electronically are encouraged not to submit paper copies.

Comments identified by RIN 1210–AB38 may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [e-ORI@dol.gov](mailto:e-ORI@dol.gov)
- *Mail or Hand Delivery:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, *Attention:* RIN 1210–AB38; Target Date Disclosure.

Comments received by the Department of Labor may be posted without change to <http://www.regulations.gov> and <http://www.dol.gov/ebsa>, and will be made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Kristen Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Employee Benefits Security Administration of the Department of Labor (Department) is reopening the period for public comment on proposed regulatory amendments to improve the information that is disclosed to participants and beneficiaries concerning investments in target date or similar funds (TDFs). In November 2010, the Department published a proposal to amend its qualified default investment alternative regulation (29 C.F.R. §2550.404c-5) and participant-level disclosure regulation (29 C.F.R. §2550.404a-5). The comment period for the proposal originally closed on January 14, 2011.<sup>1</sup> The proposal includes more specific disclosure requirements for TDFs, based on evidence that plan participants and beneficiaries would benefit from additional information concerning these investments. Specifically, the proposal would require an explanation of the TDF's asset allocation, how the asset allocation will change over time, and the point in time when the TDF will reach its most conservative asset allocation; including a chart, table, or other graphical representation that illustrates such change in asset allocation. The proposal also would require, among other things, information about the relevance of the TDF's "target date;" any assumptions about participants' and beneficiaries' contribution and withdrawal intentions following the target date; and a statement that TDFs do not guarantee adequate retirement income and that participants and beneficiaries may lose money by investing in the TDF, including losses near and

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<sup>1</sup> See 75 FR 73987 (Nov. 30, 2010), proposing to amend the Department's qualified default investment alternative regulation, 72 FR 60452 (Oct. 24, 2007), and participant-level disclosure regulation, 75 FR 64910 (Oct. 20, 2010).

following retirement. Additional background and other information are contained in the Supplementary Information published with the proposed amendments.<sup>2</sup>

Throughout this regulatory initiative, the Department has consulted with the Securities and Exchange Commission (Commission). The Department also specifically requested comment in its proposal on whether the final rule should incorporate any of the elements of a rule proposed by the Commission to address concerns regarding the potential for investor misunderstandings about TDFs.<sup>3</sup> In response, a large number of commenters strongly encouraged careful coordination with the Commission to avoid the potential cost and confusion (on the part of plan sponsors and participants and beneficiaries) that could result if the two agencies were to establish inconsistent disclosure requirements. Because of the relationship between the Department's and the Commission's regulatory proposals, the Department has continued to consult with Commission staff while working to issue a final rule.

As part of its regulatory process, the Commission recently engaged a consultant to conduct investor testing of comprehension and communication issues relating to TDFs. A report presenting the findings of this research on individual investors' understanding of TDFs and related fund advertisements is publicly available on the Commissions' website.<sup>4</sup> To provide interested parties an opportunity to comment on the results of this research and on its regulatory proposal, the Commission recently reopened the comment period for its proposal.<sup>5</sup>

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<sup>2</sup> *See id.*

<sup>3</sup> Commission Release Nos. 33-9126, 34-62300, IC-29301 (June 2010).

<sup>4</sup> <http://www.sec.gov/comments/s7-12-10/s71210-58.pdf>.

<sup>5</sup> *See* 77 FR 20749 (April 6, 2012).

As the results of this research also may be relevant to the Department's proposal, and in order to provide all persons who are interested in this research an opportunity to comment on the report, the Department is reopening the comment period before action is taken to finalize regulatory amendments. The Department invites additional comments on the TDF proposal in light of this new research. To avoid unnecessary duplication, the Department encourages parties who submitted comments to the Commission in response to their reopened comment period, and who consider their comments to be similarly relevant to the Department's review of the above-mentioned research, to submit (or reference) such comments, in response to this request, for inclusion in the Department's public record. Parties also may comment on any other matters that may have an effect on the Department's proposal. Accordingly, the Department is extending the comment period until **[INSERT DATE THAT IS 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Signed at Washington, DC, this 15th day of May, 2012.

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Phyllis C. Borzi

Assistant Secretary, Employee Benefits Security Administration, Department of Labor

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